



Comptroller General
of the United States

Washington, D.C. 20548

738223

Decision

Matter of: Robert B. Tombs

File: B-256927

Date: September 22, 1994

DIGEST

The claim of a British citizen employed as a forest firefighter, under emergency circumstances, by the Forest Service comes within the statutory exceptions to the prohibition against payment of compensation to certain aliens, and neither 8 U.S.C. § 1324a nor 8 U.S.C. § 1342b (1988 and Supp. IV 1992) bars payment. Thus, he may be paid for emergency services rendered to the Forest Service.

DECISION

The Forest Service, U.S. Department of Agriculture, requests an advance decision as to whether the claim of a British citizen who was hired by the Forest Service as a firefighter under emergency circumstances may be paid for the firefighting work he actually performed.¹ Under the authority of § 607 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, we conclude that he may be paid.

The record in this matter shows that Mr. Robert B. Tombs, a British citizen and a trained firefighter, was temporarily in the United States under a B-1 visa in 1993. On September 29, 1993, the Forest Service office in Darrington, Washington, hired him as a forest firefighter. As ordered by the Forest Service, Mr. Tombs competently performed emergency firefighting duties at the Meadow Creek fire in the Wenatchee National Forest, Wenatchee, Washington, from September 29 through October 5, 1993. The Forest Service's Emergency Firefighter Time Report shows that Mr. Tombs is due a gross amount of \$886.44 for his services.

On October 5, 1993, the Forest Service, although it was very satisfied with Mr. Tombs's services, dismissed him because the Forest Service believed that it was not authorized to

¹This matter was submitted to our Office by Mr. Darold D. Foxworthy, Director, Fiscal and Accounting Services, U.S. Forest Service, Washington, D.C. Reference: 6500.

hire Mr. Tombs, even under emergency circumstances, since he was a British citizen and the Forest Service was thus unable to make the certifications of work authorization required by the Immigration and Naturalization Service (INS) Form I-9.² Moreover, Mr. Tombs has not been paid for the emergency services that he rendered. The record also shows that Mr. Tombs never misrepresented his citizenship status to the Forest Service and acted at all times in good faith.

The relevant statutory authority to pay Mr. Tombs is found in § 607 of the Treasury, Postal Service, and General Government Appropriations Act, 1993, Public Law 102-393, 106 Stat. 1729, 1766-1767 (Oct. 6, 1992), which provides, in relevant part, that:

"[t]his section [generally barring certain aliens from employment and payment of compensation by the United States] shall not apply . . . to nationals of those countries allied with the United States in the current defense effort, or to temporary employment in the field service (not to exceed sixty days) as a result of emergencies."

Essentially the same statutory language, which has been repeated annually in the Treasury, Postal Service and General Government Appropriations Acts for some years, was involved in Clarence D. Swanson, B-188852, July 19, 1977, in which we permitted payment of compensation to a Canadian citizen.

Furthermore, while current law also generally requires, inter alia, that for each employee hired after November 6, 1986, both the employer (including the federal government) and the employee must complete an INS Form I-9, there is nothing in the relevant statutes which prohibits the payment of compensation for work actually performed.³ Rather, they only require that the employer examine an employee's or a potential employee's documentation of the right to work in

²See text and footnote 3, infra.

³See §§ 101(a)(1) and 102(a) of the Immigration Reform and Control Act of 1986, as amended by 8 U.S.C. §§ 1324a(a) and (b), and 1324b (1988 and Supp. IV 1992). For purposes of our decision here, we will assume, as the Forest Service concluded, that Mr. Tombs was not authorized to work in the United States under a B-1 visa. See 8 C.F.R. Part 274a (1994). It does not appear that any of the exceptions for classes of aliens authorized to accept employment under 8 C.F.R. § 274a.12 (1994) is applicable to Mr. Tombs's circumstances.

the United States and keep a record of the employee's identity and work authorization for a specific period of time. In this regard, see Patel v. Quality Inn South, 846 F.2d 700, 705-706 (11th Cir. 1988) (illegal alien entitled to recover unpaid minimum wages under Fair Labor Standards Act), cert. denied, 489 U.S. 1011 (1989); and Barros v. E.W. Bliss Company, Civil Action No. 91-12633-Z (D. Mass. March 25, 1993) (discussing Circuit Court decisions allowing illegal aliens to recover backpay).⁴

Since Mr. Tombs is a citizen of the United Kingdom of Great Britain and Northern Ireland, which is allied with the United States in the current defense effort, and since he was hired as a firefighter, under emergency circumstances, in the field service of the Forest Service, Department of Agriculture, the statutory prohibition cited above, is not applicable in the circumstances of his case, and neither 8 U.S.C. § 1324a nor 8 U.S.C. § 1324b (1988 and Supp. IV 1992) bars payment. Thus, Mr. Tombs's claim may be paid.

for *Supreme Court*
 Robert P. Murphy
 Acting General Counsel

⁴Not reported in F. Supp. Also cited as 1993 WL 99930 (D. Mass.).